IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10451 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURENDRA BIHARILAL GUPTA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10451 of 2002

MR BA VAISHNAV for Petitioner No. 1

MR PD BHATE ASSTT GOVERNMENT PLEADER for Respondent No. 1-4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/07/2003

ORAL JUDGEMENT

#. Heard learned advocate Mr.Biren Vaishnav on behalf of the petitioner and learned AGP Mr.P.D.Bahte for respondents.

Rule. Learned AGP Mr.Bhate waives service of Rule for respondents. With the consent of the learned advocates for the parties, this matter is taken up for final hearing today.

#. The facts of this case shows that the petitioner came to be appointed as "Vaidya" and made in charge of Ayurvedi dispensary at Navi Bandar, District Junagadh on 1th / 13th march, 1961. Thereafter, the petitioner remained in service upto 31st July, 1993, however, in between, he remained absence for a period from 3.3.1978 to 31.7.1984 for total 2347 days. For the aforesaid misconduct and the departmental inquiry conducted therefor, punishment of stoppage of one increment with future effect was imposed by the respondent authority on the petitioner with effect from 5.4.1984. Thereafter, the petitioner had resumed on duties but there was some dispute between the parties about resumption of duty by the petitioner with effect from 1.1.1984 upto the date of retirement. However, it is necessary to note that no departmental inquiry or action of the said period has been initiated by the respondents against the petitioner. In light of this fact, the question is, whether the petitioner is entitled to pensionary benefits according to the Pension Rules of the State Government or not. In regard to grant of pensionary benefits, request is made by the petitioner to the respondents but his request has been turned down on the ground that the petitioner has not completed 20 years continues service being the qualifying service to receive benefits of pension and except that there is no other reason to deny the pensionary benefits to the petitioner.

#. Learned advocate Mr.Biren Vaishnav appearing for the petitioner has submitted that in case of one another employee Shri R.A.Pandya, Professor, Ayurvedi College, Baroda, the State Government has considered the absent period from 26th September, 1969 to 23rd July, 1976 being the extra ordinary leave period and ultimately that order was passed on 18th January, 1978 and as a result thereof, said employee Shri R.P.Pandya held to be eligible for getting pension. However, learned advocate Mr.Vaishnav submitted that the petitioner came to be retired on date 31st July, 1993 but at the relevant time, no order of retirement has been passed by the respondent but now the same is passed on 28th March, 2000 with retrospective effect retiring the petitioner from 31st July, 1993. In light of these facts, it is undisputed that the petitioner who had joined service on 6th / 13th March,

1961 remained in service upto 1978 and thereafter, the dispute about absentism arose. The misconduct which was alleged against the petitioner, is found to be proved and punishment order has already been passed by the respondent departmental authority on 5th March, 1984. Therefore, there is nothing against the petitioner which comes in his way for getting benefits of pension. Therefore, according to my opinion, in above background of the facts and circumstances of the case, the respondents authorities are directed to consider the case of the petitioner according to the pension rules and examine the same and to pass appropriate orders as per the Pension Rules while keeping in mind the fact that whatever the period of absentism may be considered as an extra ordinary leave, has been considered similar to the case of Mr.R.A.Pandya referred to above, by the respondent Government Authorities.

#. According to my opinion, it is the duty of the respondents to consider the concept of Pension before taking up decision in respect of present matter. Recently, this concept of the pension has been examined by the Apex Court in case of Kerala State Road Transport Corporation versus K.O. Varghese and others reported in 2003 AIR SCW 2847. It has been observed by the Hon'ble Apex Court in Head Note (B) as under:

"There are different classes of pensions and different conditions govern their grant. It is almost in the nature of deferred compensation for services rendered. There is a definition of pension in Art. 366 (17) of the Constitution of India, but the definition is not all pervasive. It is essentially a payment to a person in consideration of past services rendered by him. It is a payment to a person who had rendered services for the employer, when he is almost in the twilight zone of his life. [para 12]

A pension scheme consistent with available resources must provide that the pensioner would be able to live ; (i) free from want with decency, independence and self respect and (ii) at a standard equivalent at the pre-retirement level. his approach may merit their criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement ? Pension is not only compensation for loyal service rendered in the

> past but pension also has a broader significance, in that it is a measure of socio economic justice which inheres economic security in the foil of life when physical and mental powers start ebbing corresponding to aging progress and, therefore, one is required to fall back on savings. One such saying in kind is when you gave your best in the hey day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights of emoluments to one retired from service. Thus, the pension payable to an employee is earned by rendering long and sufficient service and, therefore, can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and pecuniary if there is nothing to fall back upon. It must also be noticed that the quantum of pension is a certain percentage correlated to the emoluments earlier drawn. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement. That is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure. It may be bestowed on such persons and on such terms as the law making body of the Government prescribes, and it is, at most, an expectancy granted by the law. The term 'pension' has been compared and distinguished from 'bonus', compensation', 'profits' and 'retirement payment'. A pension fund is to be distinguished from an annuity fund derived in part from voluntary contribution under a statutory option to contribute or refrain from contributing."

#. In light of these facts, it is directed to the respondents authorities to consider the case of the petitioner for pensionary benefits according to the Pension Rules applicable to the case of the petitioner and to pass appropriate orders in accordance with Pension Rules while keeping in mind the concept and object of the Pension examined by the Apex Court in decision referred to above and shall also consider the case of the petitioner in the matter of absent period of petitioner

and to pass appropriate orders in accordance with law within two months from the date of receiving the copy of this order. However, it is observed that in case if the respondent authorities come to the conclusion that the petitioner is entitled to the pensionary benefits, then to pay to the petitioner within period of one month from the date of decision that may be taken by the respondent authorities.

#. In light of above observations and directions, present petition stands disposed of accordingly. Similarly, in view of the present order, no order requires in Civil Application No.4583 / 2003 and the same stands disposed of accordingly.

Date : 19.7.2003 [H.K.Rathod, J.]

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